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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

11 JAMES M. KINDER,) Case No. 07 CV 2132 DMS (AJB)
12 Plaintiff,) [Consolidated with 07CV2226 DMS (AJB)]
13)
14 v.) Judge: Hon. Dana M. Sabraw
15) Mag. Judge: Hon. Anthony J. Battaglia
16)
17 HARRAH'S ENTERTAINMENT, Inc.;)
18 HARRAH'S OPERATING COMPANY,)
19 Inc.; HARRAH'S MARKETING)
LAUGHLIN, Inc.; HBR REALTY)
COMPANY, Inc. and DOES 1 through 100,)
inclusive,)
Defendants.)
Date: April 25, 2008
Time: 1:30 p.m.
Courtroom: 10

POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE EVIDENCE SUBMITTED BY DEFENDANTS IN SUPPORT OF THEIR REPLY RESPONSE TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS

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1 1. **Declaration of Ronald R. Giusso, in its entirety:**

2 Defendants have filed a Declaration by Ronald R. Giusso dated April 18, 2008.

3 **Grounds for objection:**

4 Mr. Giusso's declaration does not state that the matters attested to therein are based upon
5 Mr. Giusso's personal knowledge, let alone lay any proper foundation for any personal
6 knowledge upon which he makes his declaration. Mr. Giusso merely states that "I could and
7 would competently testify to all facts within my personal knowledge except where stated on
8 information and belief." (¶ 1) This is insufficient for the court to conclude that all of the matters
9 stated in Mr. Giusso's declaration are based upon personal knowledge. In fact, it appears that
10 Mr. Giusso is attempting to state that he would be willing to testify to those facts that *are* within
11 his personal knowledge, but does not say which matters stated in the declaration are actually
12 within his personal knowledge. Finally, this new evidence was submitted after Plaintiff filed his
13 opposition to Defendants' motion and therefore constitutes an improper newly submitted matter,
14 which should have been offered with Defendants' original moving papers, if at all. Therefore,
15 the entirety of Mr. Giusso's declaration should be stricken.
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18 2. **Declaration of Ronald R. Giusso, Paragraph 3:**

19 Paragraph 3 of the Declaration of Ronald R. Giusso states:

20 "An example of KINDER's false and misleading 'evidence' submitted in support
21 of his opposition is with respect to the casino known as Harrah's Rincon Casino
22 and Resort. The Rincon Casino is owned and operated by the Rincon San Luiseno
23 Band of Mission Indians – not any Harrah's entity. This information is available
24 to any member of the public who bothers to conduct a rudimentary search."

1 **Grounds For Objection:**

2 Each and every factual statement in this paragraph lacks foundation and therefore this
 3 paragraph should be stricken in its entirety. Moreover, Mr. Giusso's comments state legal
 4 conclusions [“false and misleading ‘evidence’”; “Resort is owned and operated by the Rincon
 5 San Luiseno Band of Mission Indians – not any Harrah’s entity”] and offer inappropriate non-
 6 expert “opinion” testimony about the nature of Plaintiff’s evidence. Finally, this new evidence
 7 was submitted after Plaintiff filed his opposition to Defendants’ motion and therefore constitutes
 8 an improper newly submitted matter, which should have been offered with Defendants’ original
 9 moving papers, if at all.

10 **3. Exhibit 6, attached to the Declaration of Ronald R. Giusso:**

11 Defendants have offered as evidence “a true and correct copy of the Tribal-state Compact
 12 Between The State of California and the Rincon San Luiseno Band of Missions Indians, which
 13 indicates that the Rincon Tribe owns and operates the casino known as the Rincon Casino and
 14 Resort.”

15 **Grounds For Objection:**

16 Defendants have not laid a proper foundation for this evidence nor has this evidence been
 17 authenticated. This evidence is hearsay and was submitted after Plaintiff filed his opposition to
 18 Defendants’ motion and therefore constitutes an improper newly submitted matter, which should
 19 have been offered with Defendants’ original moving papers, if at all.

20 **4. Declaration of Ronald R. Giusso, paragraph 4:**

21 Mr. Giusso states “Attached hereto is a true and correct copy of the Tribal-state Compact
 22 Between The State of California and the Rincon San Luiseno Band of Missions Indians, which

1 indicates that the Rincon Tribe owns and operates the casino known as the Rincon Casino and
2 Resort."

3 **Grounds For Objection:**

4 Mr. Giusso has not laid a proper foundation for this statement and this statement
5 constitutes an improper legal conclusion in the form of Mr. Giusso's non-expert opinion. This
6 evidence is hearsay and was submitted after Plaintiff filed his opposition to Defendants' motion
7 and therefore constitutes an improper newly submitted matter, which should have been offered
8 with Defendants' original moving papers, if at all.

10 DATED: April 22, 2008

11 By: /s/ Chad Austin

12 CHAD AUSTIN, Esq., Attorney for

13 Plaintiff, JAMES M. KINDER

14 Email: chadaustin@cox.net

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